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No. 79-2064

IN THE

Supreme Court of the United States

October Term, 1979

ERIC WALDBAUM,

Petitioner,

v.

FAIRCHILD PUBLICATIONS, INC.,

Respondent.

BRIEF OF RESPONDENT FAIRCHILD PUBLICATIONS, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

HENRY J. FORMON, JR.
1701 Pennsylvania Avenue, N.W.
Suite 1100
Washington, D.C. 20006
(202) 298-6358
(212) 826-6200
Counsel for Respondent

On the Brief:
GEOFFREY H. WARD

Dated: July 28, 1980

Question Presented

The four questions presented by Petitioner do not reflect the conclusions, legal and factual, made by the court below. Accordingly, Respondent restates, pursuant to Rule 34.2, the question presented for review:

> Whether the United States Court of Appeals for the District of Columbia Circuit was correct in its determination that under the facts of this case Petitioner was a public figure for limited purposes within the guidelines of this Court's decision in *Gertz* v. *Robert Welch, Inc.*

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Judgment and Opinions Below

Petitioner Eric Waldbaum ("Waldbaum") seeks review of a unanimous opinion of the United States Court of Appeals for the District of Columbia Circuit (Tamm, Cir. J.) dated March 31, 1980 (Pet. 1a)[1] which affirmed the memo-

[1] "a" references are to pages in Petitioner's Appendix to his Petition ("Pet.") or to Respondent's Supplementary Appendix ("Resp."), annexed hereto, as indicated. All other references are to pages of the Petition.

randum and order of the United States District Court for the District of Columbia (Corcoran, J.) dated February 15, 1979 (Pet. 26a) granting Respondent Fairchild Publications', Inc. ("Fairchild") motion for summary judgment on the ground that Waldbaum was a "public figure" for limited purposes and absent proof of "actual malice", which Waldbaum admitted he could not show, he could not recover against Fairchild.

Waldbaum enumerates four questions for review. (Pet. 2-4). It is manifest from the tenor of those questions that the only issue is whether the evidence shows that Waldbaum was a "public figure" within the meaning of this Court's decision in *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974). Parenthetically, we note here and *infra* that each of Waldbaum's questions is unnecessarily argumentative and either misstates the opinion of the court of appeals and/or mischaracterizes the evidentiary findings of that court and the district court.

Counter Statement of the Case

Fairchild takes strong issue with Waldbaum's presentation of the "facts" in its Statement of the Case. (Pet. 5-17). The Petition ignores material findings of the courts below and mischaracterizes others.

For example, Waldbaum would have this Court believe that the court of appeals reached its conclusion substantially "on the basis of a record" (Pet. 13) that included an affidavit submitted by Eric Waldbaum, 31 newspaper clippings submitted by Fairchild, and the deposition of Lloyd Schwartz, Fairchild's Washington Bureau Chief. (Pet.

10-13). Waldbaum tucks away in a footnote (Pet. 13, n. 7) reference to Eric Waldbaum's deposition despite the fact that his testimony was cited at length by both courts below (Pet. 22a-24a, 46a-48a) and represented important evidence supporting the conclusion that Waldbaum was a public figure. It is disingenuous for Waldbaum to petition this Court for review based upon a truncated statement of facts.[2]

We submit most respectfully that the Petition should be denied pursuant to Rule 21.5 because Waldbaum failed to present, anywhere in its lengthy Petition, a "*concise* statement of the case containing the facts material to the consideration of the questions presented." Rule 21.1(g) (emphasis in original).[3]

If this Court does not deny the Petition for the above reason, we submit most respectfully that the Petition should be denied because it does not present any sufficient reason for review (Rule 17). As we shall show the opinion below follows prior decisions of this Court and the cases relied upon by Waldbaum are clearly distinguishable on their facts. Indeed, in order that counsels' memoranda and the decision below would reflect the most recent thinking of this Court, the briefing schedule in the court of appeals was

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[2] Two leading commentators have stated:

> The Statement is the place for accurately summarizing the relevant facts and the treatment accorded those facts by the courts below. The facts to be set forth, moreover, include more than just those favorable to the petitioner's case. The unfavorable facts, as well as those in dispute (and so labeled), must be given whenever necessary to a proper and full understanding of the case by the Court. R. Stern & E. Grossman, *Supreme Court Practice*, §§6.29, pp. 466-67 (5th ed. 1978).

[3] Previous rules of this Court, effective at the time the Petition was filed, were to the same effect. *See*, Rules 23(4) and 23(1)(e).

adjourned pending this Court's decisions in *Wolston* v. *Reader's Digest Ass'n.*, 443 U.S. 157 (1979) and *Hutchinson* v. *Proxmire*, 443 U.S. 111 (1979).

The courts below found that the parties fundamentally agreed on the facts and that "no genuine dispute as to material facts" existed. (Pet. 2a, 27a). We summarize here the court of appeals' findings.[4]

Waldbaum served as president and chief executive officer of Greenbelt Consumer Services, Inc. ("Greenbelt") from January 1971 to March 1976. Greenbelt was a diversified consumer cooperative that at the end of Waldbaum's tenure had approximately 38,500 members and ranked as the second largest cooperative in the United States. Greenbelt owned retail supermarkets, furniture and gift outlets and automobile service stations. (Pet. 2a).

Prior to joining Greenbelt, Waldbaum was executive vice president of Hill's Supermarkets in New York. There, he was a leading advocate of certain innovative marketing policies including unit-pricing of merchandise and open dating of perishables. (Pet. 22a).

As Greenbelt's president, Waldbaum not only managed the cooperative but also continued to play an active role in setting policies and standards within the supermarket industry and assumed a consumer-oriented posture. He battled traditional practices in the industry. He made Greenbelt a leader in open dating and unit pricing and he

[4] In addition, the Court is respectfully referred to Judge Corcoran's detailed findings made after he reviewed the evidence submitted in connection with Fairchild's motion for summary judgment, including all of the exhibits and Eric Waldbaum's entire deposition. (Pet. 27a-30a, 33a-36a and 45a-50a).

vigorously fought for the introduction of those policies on an industry-wide basis. Waldbaum held numerous meetings with the press and public on topics varying from supermarket practices to energy legislation and fuel allocation. Further, he closed ten of Greenbelt's twenty-two supermarkets, all five of its pharmacies and three of its ten gas stations. These actions received wide publicity and generated considerable comment on both Greenbelt and Waldbaum in trade journals and general interest publications. (Pet. 3a, 22a).

Waldbaum testified that he believed that educating the community at large was one function of a cooperative such as Greenbelt. (Pet. 22a-23a). In this connection, Waldbaum "insisted" that he approve all information for shareholders placed in the *Co-op Consumer,* Greenbelt's monthly newspaper for shareholders, which was also circulated to the trade press. (Pet. 22a).

The court of appeals recognized that Waldbaum embroiled himself in other public controversies. (Pet. 3a, n. 3). The record showed that he actively participated in the public debate about excessive wholesale meat prices by proposing to run an advertisement on behalf of Greenbelt which stated in part, that "when the giants of the industry were feeding you bull, we were feeding you beef." Two Washington, D.C. newspapers refused to print the advertisement. With Waldbaum's prodding Congressional hearings were proposed to investigate the propriety of such refusal. (Resp. 69a). On another front, Waldbaum met with the press to outline a proposal for an extraordinary joint venture between Greenbelt and the Irish Petroleum Cooperative for oil exploration in the Irish Sea, (Resp.

71a), which would have taken Greenbelt far afield from its regular operations.

On March 16, 1976, Greenbelt's board of directors dismissed Waldbaum. *Supermarket News,* a trade publication owned by Fairchild ran an item on Waldbaum's ouster on page 35 of its March 22 issue. The six sentence article stated:

> GREENBELT OUSTS ERIC WALDBAUM
>
> WASHINGTON (FNS)—Eric Waldbaum has been replaced as president of Greenbelt Consumer Services.
>
> Rowland Burnstan will serve as acting chief executive office[r] until a new president is named. Burnstan, an independent management consultant and economist, has worked for various Government agencies and businesses.
>
> Greenbelt said part of his interim job will be to locate a new president for the co-op, which has been losing money the past year and retrenching.
>
> Waldbaum had served as president since 1971. His plans are not known.

On September 27, 1976, Waldbaum initiated this action contending that in fact Greenbelt had not been losing money or retrenching and that this allegedly false report about Greenbelt damaged his reputation as a businessman. Waldbaum sought actual and exemplary damages totalling $75,000.

After discovery, Fairchild moved for summary judgment. It argued that Waldbaum was a public figure and, because he had admitted the absence of "actual malice," he could not recover damages for defamation. Waldbaum

countered that he was not a public figure and thus would have to prove only Fairchild's negligence.

Summary judgment was granted. The district court reviewed all the evidence and found that "[b]ecause of Greenbelt's unique position within the supermarket industry and Waldbaum's efforts to advance that position, [Waldbaum was] a public figure for the limited purpose of those issues." (Pet. 50a). That decision was affirmed on appeal. The court of appeals found that because Waldbaum "assume[d] a position of great influence within a specific area and use[d] that influence to advocate and practice controversial policies that substantially affect[ed] others, he bec[ame] a public figure for that debate." (Pet. 25a).

Reasons for Denying the Writ

The United States Court of Appeals for the District of Columbia Circuit correctly held that Eric Waldbaum was a public figure for limited purposes under the guidelines of *Gertz* because he voluntarily injected himself into public controversies and maintained a prominent role in order to influence the resolution of those issues.

Waldbaum's Petition, in a contrived and distorted presentation of the reasoning of the court of appeals, argues for certiorari on the general theory that the opinion of the court "conflicts with the principles" stated in *Gertz, Hutchinson* and *Wolston*. (Pet. 19).

As we show below under the facts of this case the court of appeals' opinion does not conflict with any decision of this Court.

In *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279-80 (1964) this Court held that a public official was prohibited from recovering damages for defamation relating to his official conduct absent proof of "actual malice." Thereafter, the Court extended the *New York Times* standard to "public figures." *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 155 (1967).

Subsequently, in *Gertz* the Court declined to extend the protection afforded by the *New York Times* standard to defamation actions brought by private individuals. *Gertz* identified two ways in which a person will be deemed to have attained "public figure" status:

> For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.[5] More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event they invite attention and comment. (418 U.S. at 345).

The Court described the limited purpose public figure as "an individual [who] voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues" *id.* at 351. Here, the courts below found that Waldbaum's activities plainly cast him as a public figure for a limited range of issues within the purview of *Gertz*.

---

[5] In the court of appeals, Fairchild conceded that Waldbaum was not a public figure for all purposes.

Public Controversy and Waldbaum's Role

The court of appeals found that public controversies existed. (Pet. 22a).

As relevant here, public controversies existed with respect to manufacturer's secret coding of the shelf life of goods (Resp. 67a, 68a), open dating of perishable foods (Resp. 67a, 68a), unit pricing of goods (Resp. 67a), wholesale prices of meat (Resp. 69a, 70a), competitive advertising (Resp. 69a, 70a), the energy crisis and oil supply (Resp. 71a), and, in general, the viability of consumer cooperatives. (Pet. 22a). Disclosure of secret codes that would reveal the shelf life and home storage life of products and open dating of perishables were resisted by certain major food companies. (Resp. 68a). Advertising by Greenbelt alluding to price-gouging on meat prices by competing supermarkets was rejected by two Washington, D.C. newspapers. (Resp. 69a, 70a). Congressional hearings were proposed to investigate the refusal of two Washington, D.C. newspapers to print Greenbelt's competitive ads (Resp. 69a, 70a) and hearings were also proposed to consider legislation setting up a national open dating program. (Resp. 68a). Adoption of these innovative policies, resisted by manufacturers and retailers, but advocated by Waldbaum, would benefit consumers. By virtue of Greenbelt's unique position and its size in the supermarket industry and Waldbaum's prominent and persuasive campaign for introducing consumer-oriented policies on a national basis, Greenbelt and Waldbaum were at the forefront of the controversies. (Pet. 3a, 22a, 24a, 25a).

It is beyond peradventure that Waldbaum "thrust" himself into the forefront of these public controversies in an

effort to "influence the resolution of the issues involved". *Gertz,* 418 U.S. at 345. Waldbaum was a leading advocate of, indeed initiated, controversial pricing, dating and advertising policies. (Pet. 3a, 22a, 24a). He made Greenbelt the industry flagship in adopting innovative policies and consequently, Greenbelt was often the subject of news reports. (Pet. 22a).

Waldbaum held meetings attended by the press and public where he spoke out on controversial issues including, unit pricing, open dating, energy legislation and fuel allocation. (Resp. 76a-78a). He attempted to place advertisements which reflected his controversial views. (Resp. 69a, 70a). He exercised editorial control over and authored articles for Greenbelt's monthly newspaper. (Pet. 22a). Further, Waldbaum directed that ten of Greenbelt's twenty-two supermarkets, five of its pharmacies and three of ten gas stations be shut down. (Resp. 72a-74a). (Pet. 3a, 21a-25a).

Waldbaum's testimony, cited extensively by both courts below, belies his claim that he did not voluntarily assume a prominent role in the controversies. He testified that he "went out of [his] way to solicit and promote involvement of [Greenbelt's] membership," and that a consumer cooperative, such as Greenbelt had "an obligation to education in the community at large." Waldbaum further testified that he was "responsible for Greenbelt's public image" that he "felt as strongly about the consumer aspects of Greenbelt [as the day-to-day management of the Company], and [he thought] the Coop's livelihood depended on the promulgation of the consumer aspects." In evaluating his position Waldbaum testified that he "really had two full time jobs, not only managing a corporation

in all of its aspects but also this tremendous social outreach." (Pet. 22a-23a and 46a-48a). Thus, the court of appeals was unquestionably correct in finding that because Waldbaum voluntarily assumed a prominent position in the resolution of public controversies he was a public figure "prior to" publication of the article in *Supermarket News. Hutchinson,* 443 U.S. at 135.

Waldbaum relies on *Gertz, Hutchinson* and *Wolston* to support his position that he was not a public figure. (Pet. 19-23). Those cases are clearly distinguishable on their facts.

In *Gertz* the defendant published an article asserting that a murder prosecution against a Chicago police officer was part of a Communist campaign against the police and that testimony during the trial was false. Gertz was an attorney who represented the victim in a civil litigation against the police officer. The article portrayed Gertz as an architect of the "frame-up" of the police officer and labeled Gertz a "Communist-fronter" among other things. Gertz had had only a very minor connection with the criminal trial,[6] the subject of the defamatory article, and never discussed the case with the press. His participation was limited to representing his client during the civil litigation. Gertz did not use his representation of the victim to espouse personal beliefs or convictions.

In *Hutchinson* a research director received federal funds for his study of emotional behavior. A United States Senator believed the grant to Hutchinson to be wasteful and bestowed his "Golden Fleece of the Month Award" upon

[6] Gertz attended the coronor's inquest into the death. 418 U.S. at 326.

the federal agency that made the grant. Previous grants to Hutchinson had not generated more than passing interest from local newspapers in the plaintiff's home town. There was no evidence of controversies as to research grants in general or as to previous grants to Hutchinson, in particular. This Court found that Hutchinson's "activities and public profile [were] much like those of countless members of his profession." 443 U.S. at 135. Hutchinson had not thrust himself into a controversy about the merits of awarding research grants. Indeed, no controversy existed until the "Golden Fleece" award was made.

Finally, in *Wolston* the libel plaintiff was identified in defendant's book as being a Soviet agent in the United States. Sixteen years earlier he was interviewed on numerous occasions by the FBI and appeared before grand juries investigating espionage. On one occasion he failed to respond to a grand jury subpoena and subsequently, after offering to testify, was held in contempt. Although Wolston's failure to appear and citation for contempt attracted media attention, his activities were not "calculated to draw attention to himself in order to invite public comment or influence the public with respect to any issue." 443 U.S. at 168. He did not otherwise participate in whatever controversy may have existed about espionage.

It is evident from each of these cases that the libel plaintiff never voluntarily thrust himself into a public controversy. Gertz and Wolston played only a minor role in whatever controversy may have existed and certainly there was no evidence that they tried to influence the resolution of issues. Moreover, in *Gertz* and *Hutchinson* no controversy with which the plaintiff could be identified existed until the

defendant created it. Similarly, in *Wolston* a third party initially brought plaintiff into the controversy; sixteen years later the defendant again identified plaintiff with the earlier controversy. Throughout, Wolston did nothing.[7] Conversely, here Waldbaum voluntarily injected himself into the controversies; indeed, he publicly initiated the controversies, maintained a prominent role in them, adopted controversial marketing policies at Greenbelt and met with the press, public and Congressmen to muster support for adoption of such policies on a nationwide basis. Clearly, Waldbaum "invite[d] attention and comment" from the press and public. *Gertz,* 418 U.S. at 345. Waldbaum was not "dragged unwillingly into the controversy." *Wolston,* 443 U.S. at 166.

The allegedly defamatory article reported Walbaum's dismissal and commented on the fortunes of the cooperative under his stewardship. The court of appeals found that such comment received *New York Times* protection because it was germane to Waldbaum's participation in the controversies. (Pet. 20a-21a, 25a). The court was clearly correct. Waldbaum blazed a trail of innovative marketing policies at Greenbelt and publicly advocated that these policies be implemented throughout the supermarket industry. He also generated considerable controversy by directing that significant Greenbelt operations be closed. The financial success of Greenbelt was, of course, directly related to these policy decisions. The newspaper report that Greenbelt had been "losing money the past year and retrenching" was germane to the range of controversial issues that Wald-

[7] "Clearly those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." *Hutchinson,* 443 U.S. at 135.

baum had initiated and into which he thrust himself and Greenbelt in an attempt to influence policies in the supermarket industry. The court found that placing himself at the vortex of these controversies, Waldbaum:

> assumed the risk that comment in the press might turn to the successfulness or profitability of enterprises under his management, for the commercial success or failure of the actions he was advocating certainly is strong evidence in the public debate over whether other firms should adopt them. (Pet. 25a).

The *Supermarket News* article focused only on the "limited range of issues" for which Waldbaum would be considered a public figure and therefore, was protected under *New York Times. Gertz,* 418 U.S. at 351-52.[8]

Waldbaum's contention that the court of appeals' reasoning would protect "*any* statement" (Pet. 36, emphasis in original) is unsupported by the opinion. In fact, it flatly contradicts the court's unequivocal statement that "[m]isstatements wholly unrelated to the controversy, however, do not receive the *New York Times* protection." (Pet. 20a).[9]

Equally frivolous is Waldbaum's argument that under the court of appeal's decision every modern business execu-

[8] In *Gertz* this Court stated:

> It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." 418 U.S. at 352.

[9] Waldbaum suggests that under the court's reasoning comment on Waldbaum's "sexual preference" might be germane (Pet. 37). We believe that resort to such patently silly analysis only serves to underscore the complete lack of merit to Waldbaum's request for review.

tive will be found to be a public figure. (Pet. 30). The court found Waldbaum to be a public figure because of his many controversial activities and not because of his executive status. Indeed, the court stated that "[b]eing an executive within a prominent and influential company does not by itself make one a public figure." (Pet. 23a).

Access to Media

This Court has never held, as presented by Waldbaum (Pet. 25), that access to the media is a separate and distinct element of the public figure question. As stated by this Court, access to the media is "one of the accouterments of *having become* a public figure." *Hutchinson,* 443 U.S. at 136 (emphasis added). Waldbaum's position places the cart before the horse.

In any event the court of appeals found that Waldbaum had access to the media and was familiar with press operations. For example, the court found that "Waldbaum had prior dealings with the media" and "had held press conferences." (Pet. 25a). The court also noted that Waldbaum insisted on being *de facto* editor-in-chief of Greenbelt's monthly newspaper. (Pet. 24a). Waldbaum testified that prior to coming to Greenbelt, he frequently communicated with the press, including Fairchild's reporters. (Resp. 81a-83a). In fact, even after Waldbaum was dismissed by Greenbelt, he and Greenbelt were the subjects of news articles. (Resp. 72a-74a). Moreover, Waldbaum testified that he never requested that Fairchild clarify or correct the article.[10] (Resp. 79a-80a). Thus, it is clear that both on the law and the facts Waldbaum's argument is spurious.

[10] We are puzzled how Waldbaum can assert, as he does, that the "court of appeals has indicated that the absence of any opportunity for self-help is irrelevant" (Pet. 26) in light of these facts.

Summary

In sum, the court of appeals broke no new ground in its decision; it merely applied the facts of this case to the guidelines enunciated in *Gertz*. The facts clearly distinguish this case from *Gertz, Hutchinson* and *Wolston*.

As stated by the court of appeals:

> Not everyone who participates in activities that affect the public becomes a public figure. Nevertheless, when one assumes a position of great influence within a specific area and uses that influence to advocate and practice controversial policies that substantially affect others, he becomes a public figure for that debate. Waldbaum was such a person, and comment on his termination as president and chief executive officer of Greenbelt falls within the range of reports protected under *New York Times*. (Pet. 25a).

Conclusion

By reason of the foregoing Waldbaum's petition for a writ of certiorari should be denied.

Respectfully submitted.

HENRY J. FORMON, JR.
1701 Pennsylvania Avenue, N.W.
Suite 1100
Washington, D.C. 20006
(202) 298-6358
(212) 826-6200
Counsel for Respondent

On the Brief:
GEOFFREY H. WARD

Dated: July 28, 1980.

APPENDIX

Submitted as Exhibit A-6 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

SUPERMARKET NEWS, MONDAY, JANUARY 4, 1971 operations

this week's new supermarkets

Name of Store	City	Location	Manager	Checkouts	Sq. Ft. Total	(In Area) Selling	Parking Capacity	Features
Food Fair	Plainview, N.Y.	Great Midway Center	James Lusardi	10	34	11	300	Appetizer Section

Executive Changes

Eric Waldbaum New Head at Greenbelt

WASHINGTON (FNS)—Eric Waldbaum has been named president and chief executive officer of Greenbelt Consumer Services, consumer cooperative, here.

The co-op also, canceled its management contract with Checchi & Co., which has run the firm eight years.

Paul G. Nelson, who has been chief executive officer of GCS since last May, continues under contract on the Checchi staff.

Mr. Waldbaum, 32, was with Hill's Supermarkets, Brentwood, N. Y., as executive vice president and assistant to the chairman. Hill's has annual sales of $350 million.

GCS annual sales rose from $22 million to $30 million during eight years under Checchi management. In 1967 the co-op acquired eight Kroger supermarkets here and in 1969 it merged with Peninsula Cooperative Association, Hampton-Newport News, Va., which operated two supermarkets and a furniture store.

The firm operates 22 consumers' supermarkets, five consumers' pharmacies, 10 consumers auto service centers, seven Scan co-op contemporary furniture stores, a direct drug service, and Skinner Tires, tire distributor.

GCS expects Mr. Waldbaum to continue and expand its consumer-oriented programs. He introduced unit pricing at Hill's, a GCS official said, "and led New York chains in withdrawing opposition to unit pricing."

Mr. Waldbaum also favors open dating of perishables and views codes "as a manufacturer's black box which should be opened to consumers," the official continued.

• • •

DETROIT (FNS)—Joseph Gadus, administrative assistant to Bernard Weisberg, president Chatham Supermarkets, has been promoted to manager department of planning services, a new post. He will be responsible for developing plans for Chatham expansion and for planning services for sales, operating and new construction divisions.

Mr. Gadus was with Fernandes Supermarkets, Norton, Mass., as director of store operations and before that was with Peoples Supermarkets, New Bedford, Mass. His successor has not been named.

• • •

WOODBRIDGE, N.J.—Alan Fineberg has resigned as senior vice president, Supermarkets General, effective immediately. SGC operates Pathmark Supermarkets, Rickel's Home Centers, Crown Drug Stores and Steinbach's, Howland's and Hoehschild Kohn & Co. department stores.

• • •

CINCINNATI (FNS)—Henry E. Vonhiedemann has been named manager of advertising for Kroger Co., based here. He succeeds William J. Nanning, who is retiring. Larry H. Hollon succeeds Mr. Vonhiedemann as manager of creative services.

• • •

BUFFALO (FNS)—Samuel P. Devese has joined Twin Fair Buffalo, based discount store chain, as grocery buyer. Twin Fair has supermarkets in six of its Western New York units.

Mr. Devese was a grocery buyer for S.M. Flickinger Co., Buffalo.

CHICAGO—Joseph A. Beauvais has been named director of packaging for Independent Grocers' Alliance.

He succeeds Roy Zimmerman, who has coordinated IGA packaging operations since 1960. Mr. Zimmerman will continue to handle special packaging assignments for IGA until his retirement later on in 1971.

As IGA packaging director, Mr. Beauvais is responsible for the development, procurement, and control of all packaging materials for IGA private label foods and non-foods.

Before joining IGA as assistant packaging director in July, 1970, Mr. Beauvais was packaging buyer for Topco Associates, Skokie, Ill.

Financial Posers Shut Four-Unit Maine Chain

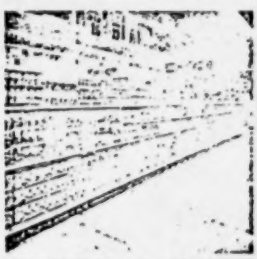
PORTLAND, Me. (FNS)—Warehouse Food Outlets, a four-store chain based here, has been closed.

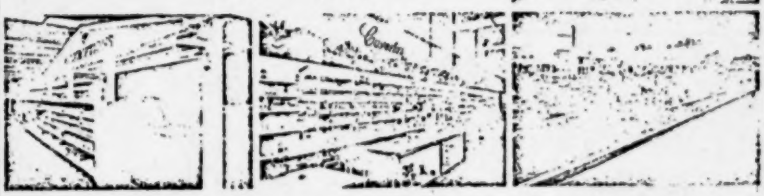
Operations have been terminated until further notice "because of financial problems", according to Jake D. Rigano, owner.

The operation, opened in 1967, has stores in Portland, South Portland, Biddeford and Auburn.

THE ONLY SHELVING SYSTEM GEARED TO THE TOTAL MARKETING CONCEPT

There's a "TOTAL MARKETING" SHELVING SYSTEM that fits every merchandising requirement — groceries... cosmetics...soft goods...hardware... drugs...sporting goods...jewelry... camera equipment...you name it!





AIRWAY "TOTAL MARKETING" SHELVING SYSTEM—YOU NEED IT NOW!

"TM" is just what you need to improve profit yield per sq. ft. of floor space...what you must have now, if you are to achieve maximum storewide profit objectives!

"TM" introduces you to new flexibility, versatility, and more effective store planning and merchandise display; major savings in installation costs — with substantially fewer parts requiring assembly at the store; new simplicity, efficiency, economy in shelving equipment purchasing.

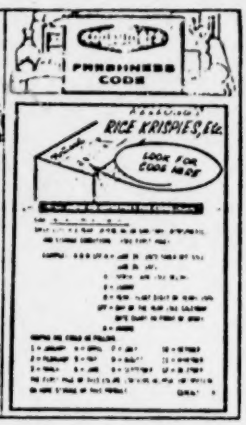
AIRWAY.

AIRWAY PRODUCTS CORP., SCHILLER PARK, ILL. 60176

Civil Act. 76-1810 Ex. A-6

Submitted as Exhibit A-7 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

SUPERMARKET NEWS, MONDAY, MARCH 15, 1971 19



D.C. Chain Provide Code Books

By RICHARD WIGHTMAN

WASHINGTON (FNS)—Consumers Supermarkets last week launched a plan by which shoppers may identify date codes and shelf life of about 2,300 products carried by the 22-store chain.

The program takes the form of "freshness" code books, placed strategically about the stores, which explain the coding symbols on the products, their shelf life and home storage life.

They apply to a wide range of product categories, including the entire meat and dairy departments, cereals, salad dressings, baby foods and snacks.

About 130 manufacturers were approached for the relevant information, and most complied. The chain, which is operated by Greenbelt Consumer Services, identified those firms which it said had either failed to provide any information or supplied only part of the details requested.

Those manufacturers also are identified in the code books. Officials said they included:

Grocery products division, Meister-Brau; Taylor Provisions Co.; Gerber; Heinz; Mead-Johnson; Nabisco; Kretschmer; General Foods; Quaker Oats; General Mills; Sanna Dairies; Pet Milk; Procter & Gamble; Pompeian Oil; Stella D'Oro, and Hunt-Wesson.

Lipton Joins In

The officials said Lipton soup earlier said it was unable to cooperate, but had since indicated it would do so.

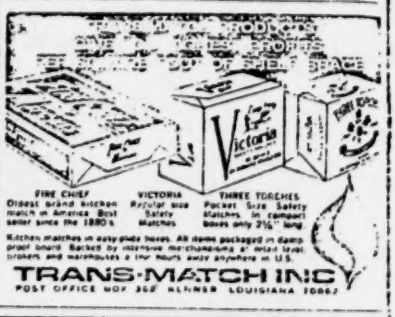
Some of these companies gave code date information but did not disclose shelf life data, the officials added.

Consumers Supermarkets also disclosed other plans to improve freshness, including a 90-hour limitation on the sale of its own brand of milk, a 24-hour shelf life for its own white bread and three-day or less "pull out" stamps on fresh red meat and poultry. Highly perishable meats will have a 24-hour pull date.

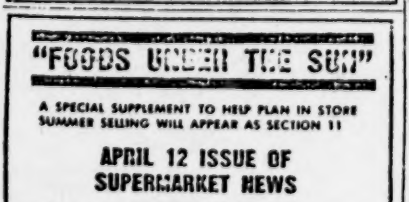
The chain launched its code book plan at a press conference during which Rep. Benjamin Rosenthal (D., N.Y.) promised that he and Rep. Bob Eckhardt (D., Tex.) will soon introduce legislation to set up a national open dating program.

The bill will require food manufacturers and retailers to place a pull date on all packaged perishable foods in a form which consumers can understand immediately.

The cosponsorship by Eckhardt is important for the Bill's future since he is a member of the House Commerce Committee, which would handle the legislation. Eckhardt will thus be in a strong position to push for the measure.



A TRUSTED SOURCE FOR ALL PRIVATE LABEL DAIRY FOODS
BUTTER
A Complete Dairy Organization—
From Cow to You... When You Need It!
Mid-West Producers' Creameries, Inc.
Should an Interruption Occur in Your Regular Private Label Source Call Mid-West... We'll Do Our Best!


"FOODS UNDER THE SUN"
A SPECIAL SUPPLEMENT TO HELP PLAN IN STORE SUMMER SELLING WILL APPEAR AS SECTION 11
APRIL 12 ISSUE OF SUPERMARKET NEWS

Where can you find MSI?
We've done it with quality china, flatware, and book continuity promotions because they're most in demand by your customers. When this demand expands to include other fast-selling products, MSI will offer the best of them to you. That's our custom. MSI reduces risk to a minimum with our computerized projection service for your stores which is nearly totally accurate. MSI specializes in preventing problems, not apologizing for them. That's why Service is our middle name.
Behind America's most successful supermarket promotions!
MERCHANDISE SERVICE, INC.
737 N. Michigan Ave.
Chicago, Ill. 60611 (312) 664-3700

Submitted as Exhibit A-14 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

Washington Pos t - April 7, 1972

D.C. Newspapers Criticized For Refusing Grocery Ad

APR 7 1972

Eric Waldbaum

By Abbott Combes
Washington Post Staff Writer

Rep. Benjamin S. Rosenthal (D-N.Y.), a leading consumer advocate in Congress, yesterday demanded a congressional investigation of the advertising policies of The Washington Post and The Evening Star newspapers.

Rosenthal said he was provoked by the refusal of both newspapers to publish a full-page advertisement for Consumers Supermarkets, a 21-store chain owned by Greenbelt Consumer Services Inc. of Silver Spring, which was brought to his attention yesterday by the firm's president.

The advertisement in question accuses other major supermarket chains in Washington of reacting too slowly to the declining wholesale prices of meat. The advertisement maintains that Consumers lowered its prices as early as March 16, while competitors were doing "precious little."

Rosenthal said it was "incredible" that two major Washington newspapers would deny their readers access to the information contained in the advertisement. We would expect this from a small-town, monopoly-controlled newspaper," he said.

Joseph Lynch, vice president-advertising of The Washington Post, said the advertisement was rejected because it failed to meet the newspaper's standard of "good taste" and because of its policy of not allowing "defamatory" messages regarding other retailers. Jack Schoo, advertising director of The Evening Star, gave similar reasons for rejecting the same ad.

When Congress reconvenes next week, Rosenthal said, he will ask Rep. William S. Moorhead (D-Pa.), chairman of the House subcommittee on freedom of information, to hold hearings on the matter. Further, Rosenthal said, he is scheduled to testify before the Price Commission on Wednesday "and unless this matter is resolved satisfactorily I'm going to tell them about it."

The advertisement began: "When the giants of the food industry were feeding you bull, we were feeding you beef" and displays a picture of a bull.

The advertisement does not mention other supermarkets by name, but said Lynch, it made obvious references to them with a "play on words." Aside from the "giants" quote, the advertisement at one point says, "The big chains did not react. They played it the safe way, the high profit way." There are numerous Giant and Safeway supermarkets in the Washington area.

Greenbelt Consumer Services Inc. is a cooperative venture with more than 36,000 customer-shareholders. In addition to the supermarkets, it also operates pharmacies service stations and Sean furniture stores in the Washington-Baltimore area.

Eric Waldbaum, the president of Greenbelt, said he received a telephone call from The Evening Star on Wednesday morning that informed him that although the ad had appeared in The Star's food section in the first edition, it was being removed from the other four editions.

Submitted as Exhibit A-15 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

FTC to Drop Sterling Charge

WASHINGTON (FNS) — The Federal Trade Commission today ... charges that the two mergers of Sterling Drug Co. and ... Drug Products Co. had anti-competitive effects in the health ... foods ads industry market.

Sterling Drug's headquarters is at 90 Park Ave., New York, and ... Drug was formerly at 605 Park Avenue, New York.

The complaint in the case also had alleged that the mergers would ... competition in the household aerosol deodorizer market.

The FTC said it is dismissing the antitrust complaint because ... with accounts for 2.2 per cent of sales in the markets and Lehn ... only accounted for 0.7 per cent of sales before the mergers.

Kaufelt Indicted on Income Tax

NEWARK, N.J. (FNS) — Stanley P. Kaufelt, president of Mayfair ... Markets, was indicted last week on charges of income tax eva...

The indictment charges that the head of the 22 unit chain evaded ... a total of $75,000 on Federal taxes for the years from 1966 ... 1969.

Attorney Herbert J. Stern said that if Kaufelt were convicted ... on all counts, he could face a maximum sentence of 32 years in jail ... a $64,000 fine.

5 Men Tried On Harlem Charge

NEW YORK (FNS) — The trial ... five men, charged with con... and violation of conflict... interest laws in the promotion ... products in Harlem super... kets got under way last week ... Federal Court.

At its start, food company offi... revealed they had signed con... acts for the promotion of their ... ducts with Coordinated Com... unity Services, a marketing ... sultant firm controlled by the ... fendants.

The Government charges that ... defendants schemed to reap ... rofits from fees paid CCS by ma... food and drink manufac...

The defendants are L. Joseph ... verton, Harlem business agent ... local 338, Retail and Wholesale ... tore Food Employes ... on, his brother, Lawrence J. ... rton, who had been on the ... on's executive board, and ... ward J. Faust, a CCS employee. ... Also: Harlem State Assem... man Nolan E. Jack, president ... the company; Theodore Nolan, ... executive secretary, Associ... Grocers of Harlem, which ... about 80 members and bar... ains collectively with Local 338, ... Harry Rosenblum part owner ... Food Family, a chain of gro... ery stores in Harlem.

The Government contends that ... contracts were made by L. Jo... ph Overton at grocers stores ... supermarkets where the ... membership of the union was em... ployed, and that prominent dis... play of products manufactured by ... the clients was so arranged through ... the efforts of the other defend... ants.

It is charged that these activi... ties were in violation of the Taft-Hartley Act, which makes it a ... crime for a labor organization ... representative to request some... thing of value from an employer ... for members of his union.

Rosenblum and Solomon are ... charged also with conspiring to ... violate provisions of the law ... which forbid the giving of some... thing of value by an employer to a ... labor organization representa... tive. The Overtons are charged ... also with conspiring to accept ... money from Solomon and Rosen... blum.

Obituaries

James H. Palmer

TEMPE, Ariz. — Services were ... held last week for James H. ... Palmer, 65, store manager for ... the past eight years for Smith's Big ... Four Markets, here, until his re... tirement last June.

D.C. Ad Controversy Continues

WASHINGTON (FNS) — The controversy over ... ads from Washington newspapers rejection of ... meat price ads from Consumers Supermarkets ... continued to flare last week.

A full page ad stating Consumers had been first ... to lower meat prices, was rejected by the two news... papers because advertising officials felt the ad was ... in poor taste and disparaged competitor firms.

However, in a series of developments last week, ... Consumers withdrew its normal full page ads in the ... weekly food sections of the Washington Post and ... Evening Star, increased radio ads and then sub... mitted a toned down version of the controversial ad ... that had been used in Friday newspapers.

Consumers Supermarkets is owned by Greenbelt ... Consumers Service.

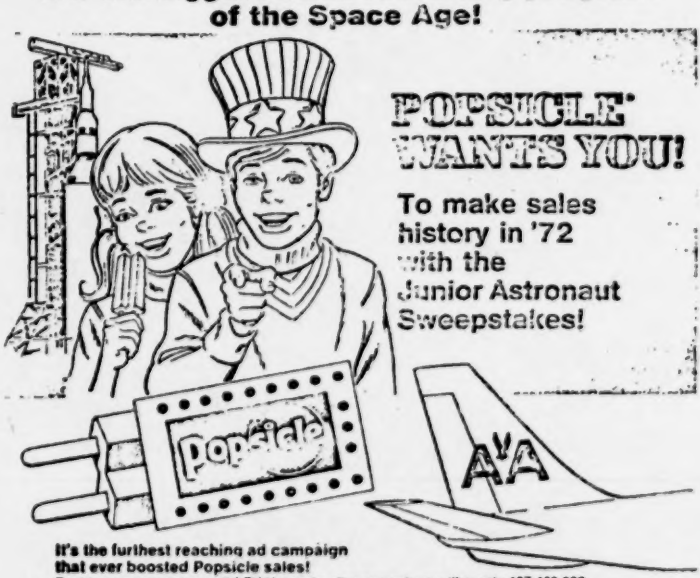
The initial full page ad which stirred controversy ... showed a picture of a bull and included wording ... that "when the plants of the food industry were ... feeding you bull, we were feeding you beef." Adver... tising spokesmen for the newspapers said infer... ences to chain stores such as Giant and Safeway in ... the ad, and the indication that competitors were not ... honest dissuaded the papers from approving the ... ads.

The new ad now reads "while the others of the ... food industry were feeding you words, we were ... feeding you beef."

But the ad also is footnoted that the changes were ... made at the newspaper's request.

During hearings last week on the meat price con... troversy on Capitol Hill, some lawmakers asked for ... an investigation of the two newspapers' action in ... rejecting the ads. A spokesman for one of the pa... pers restated to the panel his newspaper's reason... ing and editorial judgment in rejecting the original ... ad.

It's the biggest sales recruiting program of the Space Age!



POPSICLE WANTS YOU!

To make sales history in '72 with the Junior Astronaut Sweepstakes!

It's the furthest reaching ad campaign that ever boosted Popsicle sales!

Exciting commercials on all 3 TV Networks all summer long will create 167,420,000 household impressions during the height of your selling season. Millions of Sweepstakes Entry Blanks will be printed in TV Guide and popular comic books. Additional millions of padded Entry Blanks and all of the taste-tempting point-of-sale you can use will lift your profits higher than ever before.

It's the most imaginative Popsicle Sweepstakes ever!

7 of your customers will win FREE all expense paid trips for 2 via American Airlines jet to Washington, D.C. from their hometowns. They'll stay at a luxurious hotel for 5 days and 4 nights, visit The National Air and Space Museum Smithsonian Institution, and see the famous points of interest in Washington as guests of Popsicle.

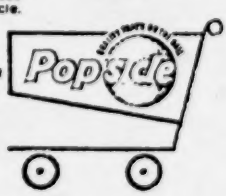
Visit us at the S.M.I. Convention booth #564

Popsicle belongs in your Ice Cream Cabinet

Available in high-profit take-home paks in 50 states and Canada.

Stock up on the one and only Popsicle with the Red Sicle Ball

Sign of the *real* thing!



POPSICLE INDUSTRIES

110 Route 4, Englewood, N.J. 07631
633 No. Baldwin Park Blvd., City of Industry, Calif. 91747
1754 Winthrop Drive, Des Plaines, Ill. 60018
50 Torlake Crescent, Toronto, Ontario, Canada

CIVIL ACT. 76-1810

EX. A-15

Submitted as Exhibit A-21 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

Washington Post - June 4, 1974

Capital Commerce

Co-Op Eyes Oil Venture in

JUN - 4 1974

By William H. Jones
Washington Post Staff Writer

Greenbelt Consumer Services Inc. the Washington area retail cooperative which experienced cutbacks in supplies from regular petroleum suppliers during last winter's energy squeeze, is thinking of taking action to guarantee gasoline availability in the future.

Along with other U.S. cooperatives, Greenbelt is conducting talks with the Irish Petroleum Cooperative that could lead to establishment of a joint venture for oil exploration in the Irish Sea.

A spokesman for Greenbelt—which operates Consumers supermarkets, Scan furniture stores, pharmacies and Exval gas stations—said negotiations currently are taking place here and in Denver with three Irish leaders—Patrick Kelly, general secretary of the Irish Agricultural Organization Society; Denis Murphy, controller of a dairy co-op; and James Hyland, deputy general manager of a food products co-op.

According to Greenbelt, the joint venture would promote oil and natural gas exploration and drilling in the Irish Sea, construction of refineries, and creation of a marketing program for petroleum that is refined.

Greenbelt Consumers currently operates seven gas stations in the D.C. area, down from about a dozen before the energy crisis curtailed supplies. Greenbelt treasurer Paul Mohn said U.S. cooperatives are interested in the venture to assure not only a dependable petroleum supply but also the "lowest, possible marketing cost."

The area cooperative is generally regarded as the largest in the nation, having been formed 35 years ago by early families in the pioneer new town of Greenbelt, Md.

Greenbelt's Scan store chain is the nation's largest importer of Scandinavian furniture, including some products of cooperatives in the Scandinavian countries.

According to co-op president Eric Waldbaum, Greenbelt's allocation last winter fell at some points to 70 per cent of its 1972 sales base but has since increased to 100 per cent of that base under the government's mandatory energy program.

Greenbelt's sole supplier has been BP Oil Corp. and Waldbaum noted that mandatory allocation will expire next February, leaving his co-op and other independent gasoline station operators without a definite source of petroleum. "We've talk with other producers t there are no alternative be added.

The negotiations on Iri Sea exploration, Walbau said, are typical of the ste necessary to build a perma nent supply base.

Presented in NEW

CIVIL ACT. 76-1810 Ex. A-21

Exhibit 5
72a

Submitted as Exhibit A-28 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

The Washington Post
BUSINESS & FINANCE
TUESDAY, AUGUST 24, 1976

By Ken Feil—The Washington Post
Greenbelt vice president Donald L. O'Keefe in his Takoma Park office.

Supermarkets Big Losers

Greenbelt Co-Op Is Fighting To Reverse Fast Shrinkage

By Matthew L. Wald
Washington Post Staff Writer

The second-largest consumer cooperative in the country, Greenbelt Consumer Services, Inc., is fighting hard to reverse its record as one of the fastest shrinking institutions of its kind.

The 39-year-old Greenbelt, with an aging membership of about 32,300, has closed 10 of its 22 supermarkets, all of its 3 pharmacies, and 3 of its 10 gas stations in the past 5 years. The co-operative lost $1.5 million from 1970-72, and despite profits of $794,000 in the two years ended last January, it still had a deficit of $360,000 as of that date.

It also is reshuffling its management, and attempting to bring the $7.00 book value per share back up to the par of $10.

Perhaps a more serious indication of poor health, Greenbelt has not paid members "patronage refunds" since 1950. Until that year, the cooperative refunded a portion of profits to members, in proportion to the amount they spent in company stores.

Such discounts to members form the backbone of most cooperatives, but Greenbelt has little prospect of resuming them until 1978.

Greenbelt's biggest loser has been its supermarket chain, much of which was acquired from Kroger Supermarkets in 1967. The purchase gave the cooperative several stores outside its membership area, and most were old or poorly located for any consumers. Stiff competition in the supermarket

See GREENBELT, D11, Col. 4

CIVIL ACT. 76-1810 Ex. A-28

Submitted as Exhibit A-28 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

Greenbelt Co-Op Fights to End Losses

GREENBELT, From D7

business, in addition, has been cruel to the small chain.

The shining star of the operation has been the Scan furniture stores, which have operated profitably through the supermarket's difficulty. But Scan recently discharged 20 employees on suspicion of having stolen $300,000 in furniture over the past few years. Greenbelt is trying to itemize its losses, and collect from its insurance company.

Members also can open share-draft accounts, which amount to interest-bearing checking accounts by purchasing shares in the credit union. Shares may then be transferred by drafts, which merchants or individuals may present to the credit union for cash.

The cooperative also offers inexpensive group travel plans, and is considering attracting new members by buying condominium apartments in Florida and renting them cheaply to Greenbelt members. A prepaid legal plan, which resembles a health-insurance plan in structure, also is under consideration.

But for, those active in Greenbelt, the most important aspect is the democratic control of the cooperative's activities by members. Ownership of voting stock is limited to one share per person, and investment in the cooperative by any individual also is sharply limited.

But Greenbelt shows signs of deterioration on that front, too. In a prospectus for new stock filed with the Securities and Exchange Commission, the cooperative revealed that only 6,800 votes of a possible 33,300 were tallied in the last election.

Another disturbing trend in Greenbelt's membership is age. One director estimated that the age of the average member is 55. Another, noting the paucity of young members, said that Greenbelt has suffered from lack of an active membership campaign in years when it was competing with popular "new wave" co-ops, which operate with minimal facilities (and therefore overhead expenses).

To change its direction, Greenbelt's board of directors decided to seek new management. Eric Walbaum, the chief executive officer since 1971, was offered a contract which "more realistically reflected the goals of the co-op," according to Paul O. Mohn, chairman of the board.

Mohn and others called Waldbaum a qualified, capable businessman. But, according to Bruce D. Palmer, a board member, "his commitment was more toward the commercial aspects of the organization than to the consumer involvement." Another said simply that his "philosophy" was not compatible with a cooperative.

In March, following what the co-operative refers to as the "non-renewal" of Waldbaum's contract, he left the organization. Negotiations on his severance benefits are still going on.

Greenbelt is looking for a new chief executive officer, but has found the field of businessmen with experience in co-ops to be small.

The co-op believes it has reversed its trend of losses and improved its mix of retail outlets. It is expanding its furniture operation, and opened a "Straight from the Crate" fresh meat and vegetables store.

Greenbelt also has some innovative distribution schemes in mind. One is a direct-charge outlet, where items are put on the shelves at wholesale cost. The store is open only to members, who are billed a set fee to cover overhead expenses.

"It would be a much more spartan facility, with no Muzak and shiny glitter," said Wilbur T. Wright Jr., director and treasurer.

But the future of the organization depends, according to several directors, on an infusion of energetic new members, who will further the idea of consumers owning and controlling their retail outlets.

Submitted as Exhibit A-21 to Affidavit of Lloyd Schwartz in Support of Fairchild's Motion for Summary Judgment.

Washington Post - July 3, 1977

Greenbelt: One Co-op Searching for its Past

JUL 3 1977

Once, it was a model of cooperative enterprise, proof that a business, voluntarily organized and owned and controlled by members, could compete against traditionally for-profit-only firms. That was 40 years ago.

In recent times, the Silver Spring-based Greenbelt Consumer Services, Inc.—the second largest consumer cooperative in the country—lost its way.

Some say it grew too big for itself. Others, that the former Greenbelt management team lost sight of their commitment to consumer involvement and pursued dreams of empire instead.

JUL 3 1977

At one time, the Greenbelt cooperative was an impressively large business: 22 supermarkets, 5 pharmacies, 10 gas stations. Today, it is down to 12 supermarkets and 7 gas stations. It had been trying to erase a $1.5 million deficit left over from the 1970-72 period, but last year suffered a loss of $462,000. The book value of its stock has fallen from $10 per share to $5.58 as of January, 1977.

Most serious of all, Greenbelt has not refunded any profits to its membership since 1959. Called "patronage refunds," these returns are a unique feature of cooperatives and distinguish them from other forms of private enterprise. They are generally awarded in proportion to the amount each member spends at the co-op.

Despite its troublesome past, Greenbelt is not about to abandon its 50,500 members. Its chain of Scan furniture stores have been operating profitably throughout the dark years and are continuing to expand. Last year, a tenth Scan store opened for business.

More significantly, the cooperative has filed with the Securities and Exchange Commission for permission to seek [illegible] members.

Much of the guarded optimism among the co-op's staff centers around their new chief executive, Roy Bryant. He was hired at the end of last year from the large and successful Berkeley Co-op, bringing with him 30 years of food industry experience.

Why leave a sunny and profitable operation on the West Coast for something uncertain and less appreciated in the East? Because, say those who know Bryant's mind, co-ops have become a way of life for him and for many in the West, as he thinks they can become for many in the Washington area.

THE SUCCEEDING PAGES CONTAIN EXCERPTS
FROM THE DEPOSITION OF PLAINTIFF ERIC WALDBAUM
(SEPTEMBER 13, 1978)

organization?

A No.

Q Well, who handled matters such as press releases while you were President?

A Well, there were different people at different times. The last one would have been Marjorie Wiener, who was the editor of the Coop newsletter. She was instructed that all press releases which were to be issued in the name of the Cooperative must be cleared with me.

Q And for how long was she doing that?

A Several years. Prior to that, I think W. -- I am not sure of his first initial -- someone by the name of Victor Smith performed that function.

Q But you approved every --

A I approved every press release.

Q Can you tell me approximately how many press releases might be issued in an average month by Greenbelt?

A I would assume less than one, but --

Q What would be the nature of it?

A The nature of it?

Q Yes, of the press release. What would be occasion for a press release?

A Well, we were required to issue financial releases subsequent to the issuance of any financial reports to our shareholders. That was one form of press release.

Q And what might be another type of press release?

A Oh, announcing of a new product --

Q How about closing --

A Announcing of a store opening or closing, announcing of meetings or anything that we thought would be newsworthy that would get publicity for the Coop.

Q What kind of meetings are you referring to?

A Well, we had meetings on the question of energy legislation and fuel allocation, unit pricing, open dating.

Q And who would attend these meetings?

A The press, members of the public.

Q What press in general, what area?

A Trade press and the -- you know, general press. We would send out a list and invite people to the meetings.

Q And what newspapers, for instance, would be on the list?

A She prepared her own list. I was not concerned with that.

Q Newspapers in Virginia, Maryland, Washington?

A Anywhere where we were, plus trade publications would be on our list of people to send press releases to. I would imagine that there were probably 100 publications.

Q Mostly newspapers?

A I can't -- I would say not.

Q And how many members did the Coop have?

A If you want to ask at a point in time, I can give you a specific answer.

Q All right. Well --

A Any time between 1974 and 1976.

Q No, let's say what was the range while you were President, approximately?

(Whereupon, the witness referred to some documents.)

A Well, at the time that I -- approximately the time that I left, there were approximately 38,500 members, and --

(Whereupon, the witness further examined the documents.)

-- and at the time I came, approximately 33,500.

Q These were members of the public?

A I'm sorry, I don't understand your question.

Q Thirty-three thousand members of the public owned

approved by me.

Q Who in the Greenbelt organization while you were there had authority --

A Me.

Q -- to tell any members of the press anything about Greenbelt?

A Me.

Q Just you?

A Yes. There is a reason for that.

Q I understand. Now do you have a recollection of when the article referred to in Count Seven of your complaint was brought to your attention? That is the article published in the Fairchild paper, which is quoted on page 8.

(Whereupon, the witness examined the documents.)

A I can't give you specifics, but it was shortly after the article came out, and I really can't at this time recall the correspondence between the masthead date and the time that it comes out of this publication. It was shortly after it came out.

Q A matter of days?

A That is my recollection.

Q Did you telephone anyone at Fairchild or protest to anyone at Fairchild about this article?

A No, I did not.

Q Do you know if anybody at Greenbelt did?

A I don't know.

Q Now in this action Greenbelt, as you know, or might know, filed an answer to your complaint. Have you had an opportunity to look at that?

MR. TURNBULL: He certainly has not recently

MR. FORMON: Would you show him Greenbelt's answer, please.

(Whereupon, the documents were shown to the witness.)

It is the answer filed, the answer to Counts Five and Eight filed by the firm of Gulpa, Clark, Martel and Donelly, dated November 30, 1976.

MR. TURNBULL: Plaintiff Waldbaum now has it in front of him.

MR. FORMON: All right.

BY MR. FORMON:

Q Now I ask you if you could also look at your complaint to paragraph 29 of your complaint.

Q Can you tell me the nature of the reference?

A I considered it quite favorable.

Q I think I have covered that list. In connection with the Defendant Fairchild Publications, did you have any -- at any time prior to commencement of this action, any conversations or communications with anybody from Fairchild?

A Oh, sure.

Q And with whom?

A I couldn't begin to tell you.

Q You don't know the names of the people?

A No.

Q Well, did you have face to face communications or telephone --

A No, telephone. No, I have had lots of face to face, sure.

Q In your office or where?

A I am not getting your question, obviously. In my offices --

Q Yes, did you meet with Fairchild people?

A In New York I met with them.

Q You said you are not getting my question?

A Your question seems to be awfully broad.

MR. TURNBULL: Fairchild Publications.

THE WITNESS: I am answering you from all of the time of my business career, have I ever had any dealings with Fairchild Publications. Is that what you intend?

MR. FORMON: Well, I hadn't intended it. I didn't realize it.

THE WITNESS: Okay.

BY MR. FORMON:

Q But you did have, you have had dealings with the Fairchild people?

A Yes.

Q And when would you say approximately was the first time?

A Oh, I am sure in the Sixties.

Q And in the Sixties you were with KMS?

A When I was with KMS Bruce, when I was with Hill'n, when I was with Korvette's.

Q All right. Now can you tell me -- I don't want you to go into detail -- the type of matters with which you were in communication with and, if you can, the people with whom you were in communication.

A Usually, you know, a reporter would call up and say,

you know, We heard about thus and so; when can you tell us about it?, and if I were authorized to speak on a subject, I would tell them what I was authorized to say. There were lots of questions from time to time on unit pricing information to computer information to --

Q Unit what?

A Unit pricing information.

Q Pricing information? In what field of the business were you dealing when you talked with Fairchild people? For instance, they published Women's Wear Daily, Daily News Record, Electronic News, Energy User News, Menswear, Suit-Footwear News, Supermarket News.

A I had dealings with people both from Women's Wear Daily and from Supermarket News that I recall. If I saw a complete list of Fairchild Publications, there might be others, but certainly those two.

Q I just gave them to you.

A Was that the complete list?

Q Yes.

A Okay, not Shoes.

Q And Women's Wear Daily, News Record, Electronic News --

A Women's Wear Daily, yes.